comprises a frequency of transactions associated with an identification of a customer.

38.   (Not amended)   The database of claim 34 wherein said transaction data further

comprises a frequency of transactions for a specified period of time associated with an

identification of a customer.

39.   (Not amended)   The database of claim 38 wherein said specified period of time is

one of a day and a week.

REMARKS

I.

Favorable reconsideration of this application as presently amended, is respectfully

requested.

Claims 8-39 are presently active in the application. Claims 1-7 have been canceled.

The examiner's objection on page 2 of the outstanding office action to the information

disclosure statement is noted. The information disclosure statement was filed by the attorneys

who represented the former assignee of the present application. The present attorneys do not

know which references the former attorneys considered to be most significant. On page 1 of the

supplemental information disclosure statement filed by the attorneys of the former assignees on

November 19, 1998, the former attorneys noted that pages 1-11 of the IDS list documents that

were cited in US application serial No. 08/117,951, which is the parent of the present application.

The former attorneys further noted that pages 12 and 13 of the IDS list documents cited in a

related US or foreign application and some of applicants issued patents. Applicants present

attorneys do not know whether the examiner has selected the most significant documents among

those listed in that IDS. Mr. Neifeld believes that the most relevant references are those cited in

the IDS he filed 2/21/01 identified as references AF, AW, AX, AY, AZ, AAA, AAG, AAI, and AAS. The examiner is requested to acknowledge receipt and consideration of the references cited in the IDS (Form PTO-1449 pages 1-4) filed February 21, 2001 in the next office action.

II.

Claims 8-14 stand rejected under 35 USC 112, second paragraph, as being indefinite. The examiner states that the phrase "the store's" in independent claims 8, 9, 10, and 11 lacks a positive antecedent basis. The examiner further states that claims 12-14 are indefinite because they depend from an indefinite claim.

Claims 8 and 9 line 8 and claims 10 and 11 line 6 have been amended to delete "store's" and substitute --retail establishment's-- in place thereof. Applicants submit that the noted amendments remove the indefiniteness noted by the examiner. Therefore, applicants request that the rejections of claims 8-14 under 35 USC 112, second paragraph, be withdrawn.

Claims 33-39 stand rejected under 35 USC 101 as being directed to non-statutory subject matter. The examiner states that the body of the independently claimed invention (i.e., independent claims 33 and 34) recite dollar amounts and time period that do not produce a useful, concrete, or tangible result. The examiner further stated that in making this rejection he did not accord any patentable way to the preamble of the claims.

Independent claims 33 and 34 line 1 have been amended to delete "storing" and insert --comprising stored--. By this amendment, applicants have incorporated most of the preamble of the former claims 33 and 34 into the body of those claims. In addition, in claim 33 line 4 and in claim 34 lines 3 and 4 the phrase "wherein said transaction data comprises" has been changed to --said transaction data including--. Applicants submit that claims 33-39 as amended, clearly

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recite a useful, concrete, and tangible result and therefore comply with 35 USC 101.

Accordingly, applicants request that the rejection of claims 33-39 under 35 USC 101 be withdrawn.

III.

Claims 8, 9, 12, and 13 stand rejected under 35 USC 102(b) as being anticipated by Creekmore (U.S. patent No. 4,109,238).

On page 4 line 8-page 5 line 4 the examiner states:

Creekmore discloses an [sic; a] system comprising: a terminal **13** for entering unique customer identification codes form [sic; from] customer identification presented at the point-of-sale in a retail transaction; means **26 & 27** for allowing entry of customer transaction data (the disclosed slot **26** and side **27** of the input terminal allows entry of customer transaction data because a customer enters an identification card transaction data **25**); a processor **19** and a memory **20** responsive to said terminal and said means allowing entry for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and circuitry **18 & 25** responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction [sic; at] said retail establishment upon detection of a unique indentification code of said individual customer, said signal being related to said individual customer's transaction data in shopping visits prior to

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the current shopping visit, and said signal providing information at said point-of-sale terminal derived from said database and useful fro [sic; for] effectuating targeted customer promotion. Creekmore inherently generates [a] customer information response signal as a function of analysis by circuitry of the individual customer's transaction following the detection of said unique identification code of the individual customer since the teachings of Creekmore disclose customer recognition and analysis.

The Creekmore patent fails to anticipate claims 8, 9, 12, and 13 for at least the following reasons.

First, Creekmore does not disclose a system for entering unique customer identification codes from customer identification presented at the point-of-sale. That is, Creekmore's terminal 13 is not located in a checkout lane of a grocery store and therefore is not at the point of sale, as defined by claims 8, 9, 12, and 13. It is located at a convenient location such as a location near the checkout lanes of a grocery store. (See column 5 lines 15-20.) Creekmore merely discloses a check verification system wherein a shopper may have his or her check approved prior to entering a checkout lane where the sale actually takes place.

Secondly, the system disclosed by Creekmore does not allow entry of customer transaction data as recited in claims 8, 9, 12, and 13. The only information entered by the customer in Creekmore's system is the customer identification code.

For at least the above reasons, the subject matter defined by claims 8, 9, 12, and 13 is not taught or suggested by the Creekmore patent. Therefore, applicants request that the rejection of those claims under 35 USC 102(b) be withdrawn.

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IV.

Claims 33-39 stand rejected under 35 USC 102(b) as being anticipated by Bigari (U.S. patent No. 5,010,485).

On page 5 line 6-page 6 line 10 of the outstanding office action the examiner states:

Bigari discloses transaction data comprising dollar amount of purchases and time period along [sic; alone?] or alternatively total dollar amount of purchases purchased during a period of time associated with an identification of a customer (please see column 8 beginning at line 39 which [discloses] cash register amounts calculated automatically until such time [as] the purchase amount is less than or equal to the maximum charge amount). Bigari teaches an equivalent to the claimed invention since cash registers are associated with dollar amounts and the amounts are associated with purchases which are further limited by a period of time. Bigari inherently performs the claimed transaction data claim of dollar amount and time since the claimed invention performs the same function in the same way with the same results as taught in that reference. The number and frequency of transactions over periods of days and weeks is inherently taught in Bigari since merchants sue [sic; use] actual purchase amounts for daily and/or weekly accounting purposes (please see the last paragraph in column 8). The preamble is not given the effect of a limitation unless it breathes life and meaning into the claim. In order to limit the claim, the preamble must be "essential to point out the invention defined by the claim." *Kropa v. Robie*, 88 USPQ 478, 481 (CCPA 1951). In claims directed to articles and apparatus, any phraseology in the

preamble that limits the structure of that article or apparatus must be given weight. *In re Stencel*, 4 USPQ2d 1071 (Fed. Cir. 1987). On the other hand, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *Kropa v. Robie*, 88 USPQ 478, 481 (CCPA 1951). Examiner does not give the preamble of the independently claimed transaction data patentable weight since is [sic; it] does not breath life and meaning into the body of the claim. Furthermore examiner considers the preamble as merely reciting a purpose of the transaction data system and the body of the claim does not depend upon the preamble for completeness.

The Bigari patent clearly fails to anticipate or suggest the subject matter in claims 33-39 as presently amended. As the examiner has stated, in applying the Bigari patent to claims 33-39 he did not consider the preamble of independent claims 33 and 34. Claims 33 and 34 have been amended to incorporate most of the preamble of original claims 33 and 34 into the body of those claims. When all the limitations now clearly incorporated into the body of those claims is taken into consideration, it is clear that the Bigari patent does not anticipate or suggest the subject matter in claims 33-39.

The system disclosed in the Bigari patent involves a micro-processor 12 that drives a voucher printer 30 to produce a voucher indicating the maximum charge amount that may be used to purchase goods or services from the merchant. (See column 6 line 64-column 7 line 6.)

The Bigari patent does not anticipate or suggest the structure recited in claims 33-39. That is, the Bigari patent does not teach or suggest a computer implemented customer data base comprising stored transaction data as recited in independent claims 33 and 34. Claims 35-39 depend directly or indirectly from claim 34. Therefore, those claims patentably distinguish over the Bigari patent for the reasons stated above with respect to independent claims 33 and 34.

V.

Claims 15 and 16 stand rejected under 35 USC 103(a) as being unpatentable over Creekmore in view of Off et al. (U.S. patent No. 4,910,672).

On page 7 line 6-page 8 line 19 of the outstanding office action, the examiner states:

Creekmore discloses a method comprising entering into a point-of-sale terminal a unique identification code for a customer (please see column 3 lines 6-10 which teaches the equivalent entry of account information and personal code into a transaction processor as the claimed point-of-sale terminal customer unique identification code); entering into said terminal transaction data relating to the customer's shopping transaction (please see column 3 lines 19-45 which teaches the equivalent transaction processor 19 that performs the claimed terminal transaction data entry); generating and maintaining a database, including the step of correlating said transaction data with said unique identification code (please see column 3 lines 39-66 which teach the equivalent generating and maintaining steps throughout the check cashing master file 20). Creekmore discloses the claimed invention except for the step of responding to entry, during a current transaction, of said unique identification code for a customer by analyzing said transaction

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data of the customer, including data in said database from prior transactions, with or without data from the current transaction, in order to generate a response which is a function of said data in said database from prior transactions, and by supplying said response to said terminal during said current transaction in which said unique identification code is entered, said response including information for effecting a targeted promotion to the customer. Off et al. discloses that it is known to provide the step of responding to entry, during a current transaction, of said unique identification code for a customer by analyzing said transaction data of the customer, including data in said database from prior transactions, with or without data from the current transaction, in order generate a response which is a function of said data in said database from prior transactions, and by supplying said response to said terminal during said current transaction in which said unique identification code is entered, said response including information for effecting a targeted promotion to the customer, as set forth at column 9, lines 15-60 (the input data at a scanner including a keyboard generates a coupon which inherently performs the claimed step of responding to entry in the same manner with the same function with the same results). It would have been an obvious to one skilled in the art, at the time the invention was made to modify the teachings of Creekmore, by providing the step of responding to entry, during a current transaction, of said unique identification code for a customer by analyzing said transaction data of the customer, including data in said database from prior transactions, with or without data from the current transaction, in order to generate a response which is a function of said data in said database from prior

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transactions, and by supplying said response to said terminal during said current transaction in which said unique identification code is entered, said response including information for effecting a targeted promotion to the customer, as taught by Off et al. in order to allow a more effective marketing scheme to reward frequent shoppers with targeted promotions.

The subject matter defined by claims 15 and 16 would not have been obvious from the applied references for at least the following reasons.

First, one having ordinary skill in the art would not have been motivated to combine the teachings of the Creekmore patent and the Off et al. patent in the absence of applicants disclosure. That is, the Creekmore patent is directed to a system of check verification wherein the customer's check is evaluated at a terminal remote from the checkout lane, and if the customer's check is approved the customer may use the check at the point-of-sale terminal in a checkout lane to pay for the goods selected for purchase by the customer. (See column 5 lines 15-20.) The Off et al. patent discloses a system directed to four different features--namely, (1) "negative" coupons, (2) multiple-trigger coupons, (3) log-only operations, and (4) instantly redeemable coupons. (See column 2 lines 7-11.) Because none of these features to which the Off et al. patent is directed relate to or have any bearing on the check verification system disclosed in the Creekmore patent, it is only through the improper use of hind-sight using applicants disclosure as a template or blueprint that one having ordinary skill in the art would even consider attempting to combine the teachings of applied references in the manner proposed by the examiner.

Secondly, even if the references could be combined as proposed by the examiner, the

combination would not result in the subject matter defined by claims 15 and 16. Neither of the applied references teaches or suggests any of the four steps recited in claims 15 and 16. That is, the Creekmore patent does not teach or suggest entering a unique identification code for a customer at a point-of-sale terminal. Therefore, the Creekmore patent does not teach or suggest the first step in either claim 15 or 16. Moreover, the Creekmore patent does not teach or suggest entering into said terminal transaction data relating to the customers shopping transactions. As shown in Fig. 4 of the Creekmore patent, the system merely keeps tracks of the types of checks that have been authorized and whether the number of authorized checks has been exceeded during a particular time period. Therefore, the Creekmore patent does not teach or suggest the second step in either claim 15 or 16. Because steps 3 and 4 in claims 15 and 16 are based on steps 1 and 2, it follows that the Creekmore patent does not teach or suggest the subject matter in either step 3 or step 4 of claims 15 and 16.

The system disclosed in the Off et al. patent does not include the use of a unique identification code for a customer. Therefore, the Off et al. patent does not teach or suggest the first step of either claim 15 or 16. The Off et al. patent only teaches or suggests entering at a point-of-sale terminal transaction data relating to a customer's current shopping transaction. Therefore, the Off et al. patent does not teach or suggest entering transaction data relating to the customer's prior shopping transactions. Therefore, the Off et al. patent does teach or suggest the second step of either claim 15 or 16. Because the Off et al. patent does not teach or suggest using an identification code for a customer, the Off et al. patent fails to teach or suggest the third step of either claim 15 or 16. Finally, because Off et al. does not maintain a database including data from prior transactions, it follows that Off et al. does not teach or suggest the fourth step of either claim 15 or 16.

For the reasons stated above the applied references, whether considered alone or in combination, fail to teach or suggest the subject matter defined by claims 15 and 16. Therefore, applicants request that the rejection of claims 15 and 16 under 35 USC 103(a) be withdrawn.

VI.

Claims 10, 11, and 14 stand rejected under 35 USC 103(a) as being unpatentable over Creekmore in view of Off et al. in further view of Tai (U.S. patent No. 4,908,7610).

On page 9 lines 2-11 of the outstanding office action, the Examiner states:

Creekmore in view of Off et al. discloses the claimed invention, as discussed above, except for the response being related to the individual customer's transaction data in shopping visits prior to the current shopping visit. Tai discloses that it is known to provide the response being related to the individual customer's transaction data in shopping visits prior to the current shopping visit, as set forth at column 3, lines 18-50. It would have been obvious to one skilled in the art, at the time the invention was made to modify the teachings of Creekmore in view of Off et al., by providing the response being related to the individual customer's transaction data in shopping visits prior to the current shopping visit, as taught by Tai in order to allow effective present time marketing by offering shoppers instantaneous promotional offers while actively shopping.

The subject matter defined by claims 10, 11, and 14 is not taught or suggested by the applied references for at least the following reasons.

Contrary to the examiner's assertions, the combination of Creekmore in view of Off et al.

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does not disclose the claimed invention except for the response being related to the individual customer's transaction data in shopping visits prior to the current shopping visit. As pointed out above with respect to claims 15 and 16, neither Creekmore nor Off et al. teaches or suggests entering in the customer identification code from customer identification presented at the point-of-sale in a retail transaction. Thus, neither Creekmore nor Off et al., nor the combination thereof, teaches or suggests either (1) the step of creating a database or (2) the step of generating a customer information response as recited in claims 10 and 11. The Tai patent fails to make up for the deficiencies in the Creekmore and Off et al. patents. That is, the system disclosed in the Tai et al. patent relates to a survey of prospective customers in an attempt to determine which of heaviest product purchasers regularly use coupons that are mailed by or on behalf of a retail establishment to its prospective customers. (See column 3 lines 13-16.) The coupons mailed to the prospective customers include an encoding device that may be applied by the customer to the coupon. The encoding device has incorporated therein or thereon the name and address of the prospective customer in machine readable form. Therefore, when the customer returns the coupon, the retail establishment can identify the customer that returned the coupon. The system has nothing to do with the customer's prior shopping history. That is, the customer that returns the encoded coupon may never have been in the store before and may never come back again. Thus, contrary to the examiner's assertions, the Tai patent does not disclose that it is known to provide the response being related to the individual customer's transaction data in shopping visits prior to the current shopping visit. Accordingly, the subject matter in claims 10, 11, and 14 would not have been obvious from the applied references. Therefore, applicants request that the rejection of claims 10, 11, and 14 under 35 USC 103(a) be withdrawn.

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VII.

Claims 17-32 stand rejected under 35 USC 103(a) as being unpatentable over Creekmore in view of Off et al. in view of Tai in further view of Bigari.

On page 9 lines 12-20, the examiner states:

Creekmore in view of Off et al. in view of Tai discloses the claimed invention except for the dollar amount and time of purchase. Bigari discloses that it is known to provide a step of manipulating the dollar amount and time of purchase, as set forth at column 8, beginning with line 39. It would have been an [sic] obvious to one skilled in the art, at the time the invention was made to modify the teachings of Creekmore in view of Off et al. in view of Tai, by providing a step of manipulating the dollar amount and time of purchase, as taught by Bigari in order to more effectively target consumers while shopping for promotional offers designed by marketing agencies.

The subject matter defined by claims 17-32 would not have been obvious from the applied references for at least the following reasons.

First, the examiner has not explained how he is applying any of the Creekmore patent, the Off et al. patent, or the Tai patent to claims 17-32. None of those references teaches or suggests (1) the structure recited in claim 17 of a computer implemented system providing a signal at a point-of-sale depending upon a customers shopping history and comprising a terminal for entering, during a transaction, a unique customer identification or (2) a database storing transaction data from prior transactions for a plurality of customers, such that data regarding a customers prior transactions are stored in association with an identification of that customer.

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Likewise, those references fail to teach or suggest the remaining structure set forth in claim 17.

Claim 22 recites a computer implemented method which parallels apparatus claim 17. Just as the structure recited in claim 17 is not taught or suggested by the combination of the Creekmore patent, the Off et al. patent, and the Tai patent, the steps recited in claim 22 are not taught or suggested by those references.

The Bigari patent fails to make up the deficiencies of the other three references. In addition, contrary to the examiner's assertions, Bigari does not disclose that it is known to provide a step of manipulating the dollar amount and time of purchase. The system disclosed by Bigari merely provides the production of a voucher indicating the maximum charge amount that may be used to purchase good or services from the merchant (see column 6 line 64-column 7 line 6.)

The discussion in column 8 starting at line 39, referred to by the examiner, has nothing to due with the customers prior purchasing transactions. That disclosure merely relates to a situation where the customer must remove some of the items from his shopping basket because the dollar amount of the goods in the shopping basket exceeds the maximum amount of the voucher.

Accordingly, applicants request that the rejection of claims 17-32 under 35 USC 103(a) be withdrawn.

VIII.

Claims 8, 9, 12, and 13 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of U.S. patent No. 5,305,196.

On page 10 line 16-18 of the outstanding office action the examiner states:

Although the conflicting claims are not identical, they are not patentably distinct from each other because it would be obvious to add a terminal for a check transaction processing, database building and marketing method and system utilizing automatic check reading.

Claims 8, 9, 12 and 13 would not have been obvious from claim 23 of the '196 patent. Claims 23 of the '196 patent relates to a system for creating a non-customer database for use in marketing. The system defined by claim 23 of the '196 patent does not includes means or a terminal for entering customer transaction data at the point-of-sale in the retail establishment; it does not have (1) a processor and a memory responsive to the apparatus for entering unique identification codes or (2) the terminal for entering customer transaction data for creating a database of a plurality of the retail establishment's customers' transaction data from prior shopping visits; nor does it have circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer, said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit as recited in claims 8 and 12 or the corresponding limitations in claims 9 and 13. Accordingly, applicants submit that the subject matter recited in claims 8, 9, 12, and 13 would not have been obvious from the subject matter defined in claims 23 in the '196 patent. Accordingly, applicants request that this rejection be withdrawn.

IX.

Claims 15 and 16 stand rejected under the judicially created doctrine of double patenting over claim 12 of U.S. patent No. 5,659,469 since the claims, if allowed, would improperly extend the "right to exclude" already granted by the patent.

On page 11 lines 4-10 of the outstanding office action, the examiner states:

> The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the entering steps, the generating and maintaining steps, and the responding steps.

> Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application that matured into a patent. See *In re Schneller,* 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claims 15 and 16 would not have been anticipated or obvious from the subject matter in claim 12 of the '469 patent. Claim 12 of the '469 patent does not recite the step of entering into said terminal data relating to the customer shopping transaction. Claim 12 of the '469 patent does not recite the step of generating and maintaining a database. Moreover, claim 12 of the '469 patent does not recite the step of responding to entries, during a current transaction, of said unique identification code for a customer analyzing said transaction data of the customer. The steps recited in claim 12 of the '469 patent include (1) detecting the machine readable product codes, (2) storing a plurality of customers unique identification codes, (3) applying a value

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determination to determine the value for a sale promotion, (4) generating incentive signals for different individual customer, and (5) dispensing a sales promotion on a specific product item to said customers. Accordingly, the steps recited in claim 15 are neither anticipated nor obvious from the steps recited in claim 12 of the '469 patent.

Claim 16 includes a step of entering into a point-of-sale terminal an account number from a payment instrument presented by a customer. That step is clearly not taught or suggested by claim 12 of the '469 patent. The second entering step and the step of generating and maintaining a database set forth in claim 16 are not taught or suggested by the '469 patent for the reasons stated above with respect to claim 15. The last step in claim 16 recites "using said database to affect customer services which include targeted marketing and/or promotions..." and that step is not taught or suggested by claim 12 of the '469 patent.

X.

Claims 17-32 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of the US patent No 5,529,560 [sic; 5,592,560].

The examiner states:

> Although the conflicting claims are not identically, they are not patentably distinct
> from each other because it would have been obvious to one skilled in the art to
> claim broader subject matter than what is claimed in applicants issued patent for
> an extension of patent rights.

Claims 17-33 would not have been obvious from claims 1 and 3 from US patent No.

5,592,560. The examiner's brief statement does not explain how the limitations in claims 17-32 would have been rendered obvious to one having ordinary skill in the art in view of the subject matter in claims 1 and 3 of the '560 patent. In fact, the system recited in independent claim 17 includes a terminal for entering, during a transaction, the unique customer identification. On the other hand, claim 1 of the '560 patent recites a terminal for entering selected indicia from identification presented by the customer in order to generate a unique identification code. Therefore, the terminal recited in claim 17 preforms a different function from the terminal recited in claim 1 of the '560 patent. In addition, claim 1 of the '560 patent recites a reader and a processor. Neither of those elements is recited in claim 17 of the present application. In addition, claim 1 of the '560 patent recites circuitry responsive to said processor and said database for dispensing a sales promotion. On the other hand, claim 17 of the present application recites circuitry responsive to the entry of said unique customer identification and to said terminal during said transaction for transmitting to said point-of-sale during said transaction a customer information response signal. Therefore, the circuitry recited in claim 1 of the '560 patent performs a different function than the circuitry recited in claim 17 of the present application. Accordingly, independent claim 17 would have not been obvious from the subject matter in claims 1 and 3 of the '560 patent.

Claims 18-21 depends from claim 17. Accordingly, those claim patentably distinguished over claims 1 and 3 of the '560 patent for the reasons stated above with respect to claim 17. Moreover, those claims include additional limitation that further distinguish those claims over the subject matter of defined by claims 1 and 3 of the '560 patent.

Claim 22 is the method analog of claim 17, and it is patentably distinguishes over claims 1 and 3 of the '560 patent for the reason stated above with respect to claim 17.

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Claims 23-26 depend from claim 22. Accordingly those claims patentably distinguish over claims 1 and 3 of the '560 patent for the reasons stated above with respect to claim 22. Moreover, each of those claims includes additional limitation which further patentably distinguish over claims 1 and 3 of the '560 patent.

Independent claim 27 patentably distinguishes over claims 1 and 3 of the '560 patent for the reasons stated above with respect to claim 17. Moreover, the function of the circuitry recited in claim 27 is to respond to the entry of the unique customer identification and the transaction data at the terminal for updating transaction data and dollar amounts associated with the unique customer identification in the customer database. This function is not taught or suggest by claims 1 and 3 of the '560 patent.

Claims 28 and 29 depends from claim 27. Accordingly, those claims patentably distinguish over claims 1 and 3 of the '560 patent for the reasons stated above with respect to claim 27. Moreover, those claims include additional limitations which further patentably distinguish over claims 1 and 3 of the '560 patent.

Independent claim 30 is the method analog of claim 27 and patentably distinguishes over claims 1 and 3 of the '560 patent for the reasons stated above with respect to claim 27.

Claims 31 and 32 depend from claim 30. Accordingly, those claims patentably distinguish over claims 1 and 3 of the '560 patent for the reasons stated above with respect to claim 30.

XI.

Claims 33-39 stand rejected under the judicially created doctrine of double patenting over claims 1, 2, and 3 of US patent No. 5,592,560.

On page 12 lines 1-3 of the outstanding office action, the examiner states:

The subject matter claimed in the instant application is fully disclosed in
the patent and is covered by the patent since the patent and the application are
claiming common subject matter, as follows: the claimed dollar amount and
purchased time.

Applicants note that the examiner did not include the words "obviousness-type" before
the words "double patenting" in the statement of the rejection. Therefore, it is not clear whether
the examiner is asserting that claims 33-39 are unpatentable on the grounds of obviousness-type
double patenting or on the grounds same invention double patenting which is precluded by 35
USC 101. However, applicants assert that claims 33-39 are clearly not directed to the same
invention as claims 1, 2, and 3 of the '560 patent. That is, claims 1, 2, and 3 of the '560 patent
are directed to a system for performing targeted marketing, whereas claims 33-39 are directed to
a computer implemented customer database. Therefore, the two sets of claims are directed to
different statutory classes of invention. Accordingly, applicants interpret the rejection as being
based on the ground of obviousness-type double patenting.

Independent claim 33 would have not been obvious from claims 1, 2, and 3 of the '560
patent because claims 1, 2, and 3 of the '560 patent are directed to a system for dispensing a sales
promotion at the point-of-sale to customer who meet a predetermined infrequent product
purchasing history criteria whereas claim 33 is drawn to an computer implemented customer
database. The computer implemented customer database recited in claim 33 stores transaction
data with respect to all of the customers prior transactions. On the other hand, claims 1, 2, and 3
of the '560 patent are directed to a system for processing data related to products infrequently

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purchased by a customer in prior transactions. Therefore, the subject matter in claim 33 would not have been obvious from the subject matter in claims 1, 2, and 3 of the '560 patent.
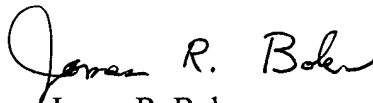
Independent claim 34 distinguishes over claims 1, 2, and 3 of the '560 patent for the reasons stated above with respect to claim 33. In addition, 34 specifically recites that the transaction data include the total dollar amount of purchases purchased during a time period associated with an identification of a customer. There is no teaching or suggest of that recitation in claims 1, 2, and 3 of the '560 patent. That is, claims 1, 2, and 3 of the '560 patent are directed to a system for processing data related to products infrequently purchased.

Claims 35-39 depends from claim 34. Accordingly, those claims are patentably distinguish over claims 1, 2, and 3 of the '560 patent for the reasons stated above with respect to claim 34. Moreover, each of those claims contains additional limitations which further patentably distinguish over claims 1, 2, and 3 of the '560 patent.

XII.

For the reasons stated above, applicants request favorable reconsideration and allowance of claims 8-39.

Respectfully submitted,

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Please rewrite claims 8-39 as follows:

8.   (Twice amended)   A system for accumulating customer transaction data at the point-of-sale in a retail establishment and for effectuating customer promotion on the basis thereof, comprising:

a terminal for entering unique customer identification codes from customer identification presented at the point-of-sale in a retail transaction;

means for allowing entry of customer transaction data;

a processor and a memory responsive to said terminal and said means for allowing entry for creating a database for a plurality of the [store's] retail establishment's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and

circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer, said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit, and said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion.

9.   (Twice amended)   A system for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising:

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apparatus for entering unique customer identification codes from customer identification presented at the point-of-sale in said retail establishment;

a terminal for entering customer transaction data at the point-of-sale in said retail establishment;

a processor and a memory responsive to said apparatus and said terminal for creating a database for a plurality of the [store's] retail establishment's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and

circuitry associated with said memory and responsive to the entry of said individual customer's identification code during a transaction at the point-of-sale, said circuitry being operable to generate a customer information response signal at the point-of-sale representative of said individual customer's transaction history prior to the current shopping visit, said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion.

10.   (Twice amended) A method for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising the steps of:

entering unique customer identification codes from customer identification presented at the point-of-sale in said retail transaction;

entering customer transaction data;

creating a database for a plurality of the [store's] retail establishment's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and

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generating a customer information response at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer, said response signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit, and said response providing information at said point-of-sale derived from said database and useful for effectuating targeted customer promotion.

11.   (Twice amended)   A method for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising the steps of:

entering unique customer identification codes from customer identification presented at the point-of-sale in a retail establishment;

entering customer transaction data at the point-of-sale in said retail establishment;

creating a database for a plurality of the [store's] retail establishment's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code;

accessing said database in response to the entry of said individual customer's identification code during a transaction at the point-of-sale;

determining from said database the transaction history of said individual customer; and

generating a customer information response at the point-of-sale representative of said individual customer's transaction history prior to the current shopping visit, said response providing information at said point-of-sale derived from said database and useful for effectuating targeted customer promotion.

12.   (Not amended)   A system according to Claim 8, wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said

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individual customer's transaction data following said detection of said unique identification code of said individual customer.

13.   (Not amended)   A system according to Claim 9, wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said entry of said individual customer's identification code.

14.   (Not amended)   A method according to Claim 10, wherein said generating step includes the step of generating said customer information response as a function of analysis of said individual customer's transaction data following said detection of said unique identification code of said individual customer.

15.   (Not amended)   A method for providing customer services in a retail establishment, comprising the steps of:

entering into a point-of-sale terminal a unique identification code for a customer;

entering into said terminal transaction data relating to the customer's shopping transactions;

generating and maintaining a database, including the step of correlating said transaction data with said unique identification code;

responding to entry, during a current transaction, of said unique identification code for a customer by analyzing said transaction data of the customer, including data in said database from prior transactions, with or without data from the current transaction, in order to generate a response which is a function of said data in said database from prior transactions, and by supplying said response to said terminal during said current transaction in which said unique identification code is entered, said response including information for effecting a targeted

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promotion to the customer.

16.   (Not amended)   A method for providing services or promotions to customers in a retail establishment, comprising the steps of:

entering into a point-of-sale terminal an account number from a payment instrument presented by a customer, and using said account number as a unique identification code for the customer;

entering into said terminal transaction data relating to the customer's shopping transactions;

generating and maintaining a database, including the step of correlating said transaction data with said unique identification code, said transaction data including data from at least one past transaction of each customer; and

using said database to effect customer services which include targeted marketing and/or promotions, said using step including the step of analyzing said transaction data of the customer.

17.   (Not amended)   A computer implemented system for providing a signal at a point-of-sale depending upon a customer's shopping history, comprising:

a terminal for entering, during a transaction, a unique customer identification;

a database storing transaction data from prior transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with an identification of that customer;

circuitry responsive to the entry of said unique customer identification at said terminal during said transaction for transmitting to said point-of-sale during said transaction a customer information response signal; and

wherein said customer information response signal depends upon data stored in said

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database indicating dollar amount of at least one prior purchase associated with said unique customer identification.

18. (Not amended) The system of claim 17 wherein said customer information response signal depends upon dollar amount of a plurality of prior purchases associated with said unique customer identification.

19. (Not amended) The system of claim 17 wherein said customer information response signal also depends upon a frequency of prior purchases associated with said unique customer identification.

20. (Not amended) The system of claim 17 wherein said terminal can also receive customer transaction data.

21. (Not amended) The system of claim 17 wherein said data regarding said individual customer's prior transactions stored in association with said individual customer's identification in said database includes transaction frequency and dollar amount.

22. (Not amended) A computer implemented method for providing a signal at a point-of-sale depending upon a customer's shopping history, comprising the steps of:

entering in a terminal, during a transaction, a unique customer identification;

storing, in a database, transaction data from prior shopping transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with said an identification of that customer;

transmitting to a point-of-sale during said transaction a customer information response signal in response to the entry of said unique customer identification at said terminal during said transaction; and

wherein said customer information response signal depends upon data stored in said database indicating dollar amount of at least one prior purchase associated with said unique customer identification.

23.　(Not amended)　The method of claim 22 wherein said customer information response signal depends upon dollar amount of a plurality of prior purchases associated with said unique customer identification.

24.　(Not amended)　The method of claim 22 wherein said customer information response signal also depends upon a frequency of prior purchases associated with said unique customer identification.

25.　(Not amended)　The method of claim 22 further comprising the step of receiving in said terminal customer transaction data.

26.　(Not amended)　The method of claim 22 wherein said data regarding said individual customer's prior transactions stored in association with said individual customer's identification in said database includes transaction frequency and dollar amount.

27.　(Not amended)　A computer implemented system for updating data in a customer database, comprising:

a terminal for entering, during a transaction, a unique customer identification and transaction data for said transaction;

a database storing transaction data for a plurality of customers from prior shopping transactions, such that transaction data regarding prior transactions of a customer are stored in

association with identification of that customer; and

circuitry responsive to the entry of said unique customer identification and said transaction data at said terminal for updating transaction data and a dollar amount of purchases associated with said unique customer identification in said customer database.

28.   (Not amended) The system of claim 27 wherein said circuitry updates said transaction data associated with said unique customer identification during said transaction.

29.   (Not amended) The system of claim 27 wherein said database also stores a date of said transaction.

30.   (Not amended) A computer implemented method for updating data in a customer database, comprising the steps of:

entering in a terminal, during a transaction, a unique customer identification and transaction data for said transaction;

storing, in a database, transaction data for a plurality of customers from prior shopping transactions, such that data regarding a prior transactions of a customer are stored in association with identification of that customer; and

updating transaction data and a dollar amount of purchases associated with said unique customer identification in said customer database in response to entry of said unique customer identification and said transaction data at said terminal.

31.   (Not amended) The method of claim 30 wherein said circuitry updates said transaction data associated with said unique customer identification during said transaction.

32.   (Not amended) The method of claim 30 further comprising the step of storing in said database a date of said transaction.

33.   (Amended) A computer implemented customer database [storing] comprising

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stored transaction data from prior point-of-sale transactions for a plurality of customers, such that data regarding a customer's prior transactions [of a customer] are stored in association with an identification of that customer, [wherein] said transaction data including [comprises]:

dollar amount of purchases and time period.

34. (Amended) A computer implemented customer database [storing] comprising stored transaction data from prior transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with an identification of that customer, [wherein] said transaction data including [comprises]:

total dollar amount of purchases purchased during a period of time associated with an identification of a customer.

35. (Not amended) The database of claim 34 wherein said period of time is one of a day and a week.

36. (Not amended) The database of claim 34 wherein said transaction data further comprises a number of transactions associated with an identification of a customer.

37. (Not amended) The database of claim 34 wherein said transaction data further comprises a frequency of transactions associated with an identification of a customer.

38. (Not amended) The database of claim 34 wherein said transaction data further comprises a frequency of transactions for a specified period of time associated with an identification of a customer.

39. (Not amended) The database of claim 38 wherein said specified period of time is one of a day and a week.